IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.MC.No. 2286 of 2006()

CP.17/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: ACCUSED

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1. MOOLAVALAPPIL SHUKOOR,
   S/O.IBRAHIMKUTTY HAJI, AGED 38 YEARS,
   RESIDING AT 'SUHARA MANZIL', NEDUVOT,
   KANNADIPARAMBA AMSOM DESOM, P.O.NARATH,
   KANNUR DISTRICT.

2. V.V.IBRAHIM HAJI, S/O.MOIDEENKUTTY,
   AGED 76 YEARS, RESIDING AT 'SUHARA MANZIL',
   KANNADIPARAMBA AMSOM DESOM, P.O.NARATH,
   KANNUR DISTRICT.

3. MOOLAVALAPPIL MANZOOR,
   S/O.IBRAHIMKUTTY HAJI, AGED 35 YEARS,
   RESIDING AT 'SUHARA MANZIL',
   KANNADIPARAMBA AMSOM DESOM,
   P.O.NARATH, KANNUR DISTRICT.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

2. THE STATION HOUSE OFFICER,
   VALAPATTANAM POLICE STATION,
   KANNUR.

3. M.KHADEEJA, D/O.ABDUL KHADER,
   AGED 29 YEARS, RESIDING AT 'JAMEELA MANZIL',
   KEERIYAD.P.O, CHIRAKKAL, KANNUR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2286 of 2006

Dated this the 8th day of January 2007

O R D E R

The petitioners are accused 1 to 3 in a prosecution interalia under Sections 498A and Section 376 read with 34 I.P.C. Proceedings have been initiated against the petitioners on the basis of a complaint dated 29/11/2005 filed by the third respondent who is/was the wife of the first petitioner/accused. The petitioners 2 and 3 are father, aged 76 years of the first petitioner and the brother of the first petitioner. Against the accused/petitioners 1 and 3 there is only an allegation under Section 498A read with 34 I.P.C. Against the second petitioner, allegations are raised both under Sections 498A I.P.C as also Section 376 read with 511 I.P.C. The petitioners have come to this court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the entire proceedings initiated against all three of them. But, in the course of arguments before me after discussions at the Bar, the learned counsel for the petitioner primarily presses the prayer for quashing the charge under Section 376 read with 511 I.P.C against the second petitioner, though of course he does not make any concession.

2. Against the allegations raised under Section 498A I.P.C, it is not necessary to advert in detail to the various factual allegations. I am satisfied that if the allegations were accepted in toto, the final report filed under Section 498A cannot be said to be not sustainable. Of course, the acceptability of the factual allegations will have to be gone into in detail in the trial which is to ensue.

3. Though the learned counsel for the petitioners has not made any concession as such, I am satisfied that there is no merit in the prayer for quashing of proceedings against petitioners 1 to 3 under Section 498A I.P.C by invoking the powers under Section 482 Cr.P.C.

4. The serious question to be considered is whether the allegations raised against the second accused – father-in-law of the third respondent, present by aged about 76 years that he had committed the offence punishable under Section 376 read with 511 I.P.C deserve to be quashed by invoking the powers under Section 482 Cr.P.C.

5. A synoptic resume of the events which led to the present final report against the second petitioner under Section

376 read with 511 I.P.C appears to me to be essential.

6. The marriage between the first petitioner and the third respondent took place on 10/12/1995. The first petitioner was employed abroad and the third respondent was residing in the parental home of the first petitioner. There, obviously, was some disagreement between the spouses and the acrimony ended with a divorce effected by the first petitioner unilaterally while he was employed abroad. The intimation of divorce was received by the third respondent on 02/07/2005. The third respondent appears to have filed a complaint before the Circle Inspector of the Women Cell of the Police at Kannur. The said petition, though dated 05/05/2005 is seen received by the Women Police Cell Kannur on 08/07/2005. The same is produced before this court. Attempts were made to proceed against the second petitioner and his relatives on the basis of such a complaint. No F.I.R was registered and significantly the said complaint, which is produced before this court by the Circle Inspector of Police, Women's Cell, Kannur, reveals that there is no allegation whatsoever of any attempt to commit rape by the second petitioner against the third respondent herein. On receipt of

notices issued by the Women Police Cell of the Kannur Police (Ext.A5 series are the notices issued to the second petitioner as also the other relatives of the first petitioner), the second petitioner along with his wife who had also received notice appeared before the court of Sessions, Thalassery and by Annexure A6 order their petition for anticipatory bail was dismissed on the submission of the police that the second petitioner and his wife are not required to be arrested. Later, the first petitioner came to this court with an application for anticipatory bail and by order dated 27/10/2005, copy of which is produced as Annexure A7, that petition was also dismissed, on the representation that the petitioner was required to be arrested by the police. However, this court, in that order, directed that if the police registers any case in future under Section 498A I.P.C, based on the complaint received from the third respondent, the investigating officer must get the permission of the learned Magistrate and then only effect the arrest.

7. But the second petitioner was arrested and the second petitioner was obliged to come to this court with a bail

application for his release from custody. Allegation was raised against him under Section 376 read with 511 I.P.C. That allegation related to an alleged attempt to commit rape as early as in 1999. On an unspecified date in May 1999, at the house of the second petitioner where the third respondent was residing, he was alleged to have attempted to commit rape on the third respondent. That allegation, which significantly was not raised in the complaint dated 05/05/2005 received by the Women Police Cell of Kannur on 08/07/2005, was raised for the first time in a fresh complaint filed before the police on 29/11/2005. All along, the first and the second petitioners were raising an allegation that the Deputy Superintendent of Police having jurisdiction was very friendly with the brother of the third respondent and that is why they apprehended that police might take vexatious steps to harass the petitioners. Though, by Annexure A6 and A7, it was reported that there was no case against the petitioners, on the basis of the said complaint dated 29/11/2005, crime No.461/2005 of Valapattanam Police Station was registered under Section 498A and 511 of 376 read with 34 I.P.C. The course adopted by the investigating officer was commented adversely by this court

in Annexure A8 order dated 02/12/2005 whereunder the second petitioner was granted regular bail. It was directed that action be initiated against the police officials responsible. It was further specifically directed that a different police officer must conduct the investigation in the case. It is, thereafter that the final report had been filed alleging commission of the offence punishable under Section 376 read with 511 I.P.C against the second petitioner herein.

8. The learned counsel for the petitioner submits that the allegations against the second petitioner of alleged rape are wholly false and are raised vexatiously with the sole purpose of vexing and harassing the petitioners. This is done mala fide by the police officials in collusion with the third respondent's brother. The learned counsel submits that even the third respondent is not willing to make such allegations as are raised now against the second petitioner and that is why the third respondent, though served has not chosen to appear before this court. Notice was ordered to the third respondent but the third respondent has not entered appearance before this court.

9. Powers under Section 482 Cr.P.C are to be raised only sparingly and in exceptional cases where the ends of justice compellingly suggest to this court that such a course ought to be followed. Normally, the court would expect the accused to take part in the trial and establish his innocence. He will normally be relegated to seek the remedy of discharge/acquittal before the appropriate court. But, that is not a rule of universal application. Exceptional cases may come up in which a court would be justified in being persuaded to invoke its powers under Section 482 Cr.P.C to prematurely terminate the proceedings against an indictee. That course is of course an exceptional course. Compelling reasons must exist to persuade this court to resort such a course.

10. Is the instant case one such case ? That is the crucial question to be considered. I have already noted that the powers under Section 482 Cr.P.C cannot and need not be invoked in so far as the allegations under Section 498 A I.P.C are concerned. I would expect the petitioners to face trial and establish their contentions claiming absolution from liability in so far as that allegation is concerned. But I take note of the fact that the

second petitioner, the father-in-law of the third respondent is a person, aged about 76 years when the allegatons were raised against him on 29/11/2005. Allegations of attempt to commit rape are seen raised for the first time on 29/11/2005 though the alleged incident had taken place as early as on an unspecified date in May 1999. I have been taken through the relevant materials collected in the course of investigation. No other witnesses have been traced who had any direct inkling of this alleged offence committed by the second petitioner against the third respondent on that unspecified date in May 1999. I have already noted that no such allegations whatsoever had been raised till 29/11/2005. I have also noted that such an allegation is not even raised in the complaint dated 05/05/2005 which was received by the police on 08/07/2005 after receipt of the intimation of divorce by the third respondent. In the facts and circumstances of this case and in the light of Annexures A6 and A7, a careful and cautious approach is bound to be taken, so far as allegations subsequently raised by the third respondent to the police is concerned. After Annexures A7, there evidently was the necessity of making allegations other than the one under Section

498A I.P.C to justify any action against the petitioners without the prior permission of the learned Magistrate. The learned counsel for the petitioners submits that this is the sole reason which had prompted the police to obtain a false complaint from the third respondent making allegations of attempt to commit rape by the second respondent herein. In the facts and circumstances of this case, I find the said contention to be of much force.

11. The learned counsel for the petitioner further points out that the third respondent had not raised any such allegations against the second petitioner herein even later in the application under Section 125 Cr.P.C filed by her against the first petitioner as also in the petition filed before the Family Court claiming restitution of conjugal rights. The learned counsel for the petitioner submits that they show the reluctance of even the third respondent to oblige the police and repeat the said allegations. In the petitions filed by the third respondent before the Family Court the third respondent had stated that the second petitioner was very loving

and affectionate towards the petitioner and that his character has become worse later and he used to harass the petitioner along with the other brothers of her husband. Significantly, the allegation of rape is not seen stated even there. Again, it will not be irrelevant to note that the third respondent has not entered appearance before this court and has not made semblance of an attempt to support or justify the allegations which are shown as raised by her in the F.I.Statement dated 29/11/2005. It will not be improper in this context to note that the allegations are raised against the second petitioner on 29/11/2005 at a time when he was aged about 76 years. The offence of attempt to commit rape against the daughter-in-law is allegedly committed at a time when the second petitioner must have been aged about 70 years.

12. The totality of the facts and circumstances of this case compellingly persuade me to take the view that the belated allegations under Section 376 read with 511 I.P.C is made transparently to suit the convenience of the third respondent and her relatives at the instance of the police on 29/11/2005 at which point of time, they wanted very serious allegations to be raised against the petitioner to justify action against the petitioners. I

am satisfied, on an anxious evaluation of all the relevant inputs that this is an eminently fit case where this court must and will be justified in invoking the powers under Section 482 Cr.P.C to quash the charge against the second petitioner under Section 376 read with 511 I.P.C. No serious efforts are made by the Public Prosecutor to contend contra and to justify the allegations raised against the second petitioner under Section 376 read with 511 I.P.C.

13. In the result, this criminal miscellaneous case is allowed in part. The final report submitted by the police against the petitioners in so far as it relates to the charge under Section 376 read with 511 I.P.C against the second petitioner, is hereby quashed. Proceedings shall continue before the learned J.F.C.M-II, Kannur in so far as the allegations under Section 498A read with 34 I.P.C against all the petitioners is concerned.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006